

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Scott Johnson,**

Plaintiff,

v.

**Capitol III Associates**, a California  
General Partnership;  
**Jas Family, Inc.**, California  
Corporation; and Does 1-10,  
Defendants.

**Case No. 5:20-cv-04394-SVK**

**First Amended Complaint For  
Damages And Injunctive Relief  
For Violations Of:** American's  
With Disabilities Act; Unruh Civil  
Rights Act

Plaintiff Scott Johnson complains of Capitol III Associates, a California General Partnership; Jas Family, Inc., California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Capitol III Associates owned the improvements on the real property located at or about 408 W. Capitol Expy, San Jose, California,

1 between June 2019 and August 2019.

2 3. Defendant Capitol III Associates owns the improvements on the real  
3 property located at or about 408 W. Capitol Expy, San Jose, California,  
4 currently.

5 4. Defendant Capitol III Associates owned the improvements on the real  
6 property located at or about 424 W. Capitol Expy, San Jose, California,  
7 between June 2019 and August 2019.

8 5. Defendant Capitol III Associates owns the improvements on the real  
9 property located at or about 424 W. Capitol Expy, San Jose, California,  
10 currently.

11 6. Defendant Jas Family, Inc. owned TOGO'S Sandwiches located at or  
12 about 424 W. Capitol Expy, San Jose, California, between June 2019 and  
13 August 2019.

14 7. Defendant Jas Family, Inc. owns TOGO'S Sandwiches located at or  
15 about 424 W. Capitol Expy, San Jose, California, currently.

16 8. Plaintiff does not know the true names of Defendants, their business  
17 capacities, their ownership connection to the property and business, or their  
18 relative responsibilities in causing the access violations herein complained of,  
19 and alleges a joint venture and common enterprise by all such Defendants.  
20 Plaintiff is informed and believes that each of the Defendants herein,  
21 including Does 1 through 10, inclusive, is responsible in some capacity for the  
22 events herein alleged, or is a necessary party for obtaining appropriate relief.  
23 Plaintiff will seek leave to amend when the true names, capacities,  
24 connections, and responsibilities of the Defendants and Does 1 through 10,  
25 inclusive, are ascertained.

**JURISDICTION & VENUE:**

9. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

10. Pursuant to supplemental jurisdiction, an attendant and related cause of action, arising from the same nucleus of operative facts and arising out of the same transactions, is also brought under California's Unruh Civil Rights Act, which act expressly incorporates the Americans with Disabilities Act.

11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is founded on the fact that the real property which is the subject of this action is located in this district and that Plaintiff's cause of action arose in this district.

**FACTUAL ALLEGATIONS:**

12. Plaintiff went to the property to shop and eat at the Strip Mall in June 2019, July 2019 and August 2019 with the intention to avail himself of its goods motivated in part to determine if the defendants comply with the disability access laws.

13. The Strip Mall is a facility open to the public, a place of public accommodation, and business establishments.

14. Unfortunately, on the dates of the plaintiff's visits, the defendants failed to provide wheelchair accessible entrance door hardware at Bonfare Market and TOGO'S Sandwiches in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

15. On information and belief the defendants currently fail to provide wheelchair accessible entrance door hardware at Bonfare Market and TOGO'S Sandwiches.

16. Additionally, on the dates of the plaintiff's visits, the defendants failed to provide wheelchair accessible restrooms at TOGO'S Sandwiches in

1 conformance with the ADA Standards as it relates to wheelchair users like the  
2 plaintiff.

3 17. On information and belief the defendants currently fail to provide  
4 wheelchair accessible restrooms at TOGO'S Sandwiches.

5 18. Finally, on the dates of the plaintiff's visits, the defendants failed to  
6 provide wheelchair accessible dining surfaces at TOGO'S Sandwiches in  
7 conformance with the ADA Standards as it relates to wheelchair users like the  
8 plaintiff.

9 19. On information and belief the defendants currently fail to provide  
10 wheelchair accessible dining surfaces at TOGO'S Sandwiches.

11 20. These barriers relate to and impact the plaintiff's disability. Plaintiff  
12 personally encountered these barriers.

13 21. As a wheelchair user, the plaintiff benefits from and is entitled to use  
14 wheelchair accessible facilities. By failing to provide accessible facilities, the  
15 defendants denied the plaintiff full and equal access.

16 22. The failure to provide accessible facilities created difficulty and  
17 discomfort for the Plaintiff.

18 23. The defendants have failed to maintain in working and useable  
19 conditions those features required to provide ready access to persons with  
20 disabilities.

21 24. The barriers identified above are easily removed without much  
22 difficulty or expense. They are the types of barriers identified by the  
23 Department of Justice as presumably readily achievable to remove and, in fact,  
24 these barriers are readily achievable to remove. Moreover, there are numerous  
25 alternative accommodations that could be made to provide a greater level of  
26 access if complete removal were not achievable.

27 25. Plaintiff will return to the Strip Mall to avail himself of their goods and  
28 to determine compliance with the disability access laws once it is represented

1 to him that the Strip Mall and their facilities are accessible. Plaintiff is currently  
 2 deterred from doing so because of his knowledge of the existing barriers and  
 3 his uncertainty about the existence of yet other barriers on the site. If the  
 4 barriers are not removed, the plaintiff will face unlawful and discriminatory  
 5 barriers again.

6 26. Given the obvious and blatant nature of the barriers and violations  
 7 alleged herein, the plaintiff alleges, on information and belief, that there are  
 8 other violations and barriers on the site that relate to his disability. Plaintiff will  
 9 amend the complaint, to provide proper notice regarding the scope of this  
 10 lawsuit, once he conducts a site inspection. However, please be on notice that  
 11 the plaintiff seeks to have all barriers related to his disability remedied. See  
 12 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
 13 encounters one barrier at a site, he can sue to have all barriers that relate to his  
 14 disability removed regardless of whether he personally encountered them).

15  
 16 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
 17 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
 18 Defendants.) (42 U.S.C. section 12101, et seq.)

19 27. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
 20 again herein, the allegations contained in all prior paragraphs of this  
 21 complaint.

22 28. Under the ADA, it is an act of discrimination to fail to ensure that the  
 23 privileges, advantages, accommodations, facilities, goods and services of any  
 24 place of public accommodation is offered on a full and equal basis by anyone  
 25 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 26 § 12182(a). Discrimination is defined, inter alia, as follows:

- 27 a. A failure to make reasonable modifications in policies, practices,  
 28 or procedures, when such modifications are necessary to afford

1 goods, services, facilities, privileges, advantages, or  
2 accommodations to individuals with disabilities, unless the  
3 accommodation would work a fundamental alteration of those  
4 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

5 b. A failure to remove architectural barriers where such removal is  
6 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
7 defined by reference to the ADA Standards.

8 c. A failure to make alterations in such a manner that, to the  
9 maximum extent feasible, the altered portions of the facility are  
10 readily accessible to and usable by individuals with disabilities,  
11 including individuals who use wheelchairs or to ensure that, to the  
12 maximum extent feasible, the path of travel to the altered area and  
13 the bathrooms, telephones, and drinking fountains serving the  
14 altered area, are readily accessible to and usable by individuals  
15 with disabilities. 42 U.S.C. § 12183(a)(2).

16 29. When a business provides facilities such as door hardware, it must  
17 provide accessible door hardware.

18 30. Here, accessible door hardware has not been provided in conformance  
19 with the ADA Standards.

20 31. When a business provides facilities such as restrooms, it must provide  
21 accessible restrooms.

22 32. Here, accessible restrooms at TOGO'S Sandwiches have not been  
23 provided in conformance with the ADA Standards.

24 33. When a business provides facilities such as dining surfaces, it must  
25 provide accessible dining surfaces.

26 34. Here, accessible dining surfaces at TOGO'S Sandwiches have not been  
27 provided in conformance with the ADA Standards.

28 35. The Safe Harbor provisions of the 2010 Standards are not applicable

1 here because the conditions challenged in this lawsuit do not comply with the  
2 1991 Standards.

3 36. A public accommodation must maintain in operable working condition  
4 those features of its facilities and equipment that are required to be readily  
5 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

6 37. Here, the failure to ensure that the accessible facilities were available  
7 and ready to be used by the plaintiff is a violation of the law.

8  
9 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
10 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
11 Code §§ 51-53.)

12 38. Plaintiff repleads and incorporates by reference, as if fully set forth  
13 again herein, the allegations contained in all prior paragraphs of this  
14 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
15 that persons with disabilities are entitled to full and equal accommodations,  
16 advantages, facilities, privileges, or services in all business establishment of  
17 every kind whatsoever within the jurisdiction of the State of California. Cal.  
18 Civ. Code §51(b).

19 39. The Unruh Act provides that a violation of the ADA is a violation of the  
20 Unruh Act. Cal. Civ. Code, § 51(f).

21 40. Defendants’ acts and omissions, as herein alleged, have violated the  
22 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
23 rights to full and equal use of the accommodations, advantages, facilities,  
24 privileges, or services offered.

25 41. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
26 discomfort or embarrassment for the plaintiff, the defendants are also each  
27 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
28 (c).)

1 42. Although the plaintiff encountered frustration and difficulty by facing  
2 discriminatory barriers, even manifesting itself with minor and fleeting  
3 physical symptoms, the plaintiff does not value this very modest physical  
4 personal injury greater than the amount of the statutory damages.

5  
6 **PRAYER:**

7 Wherefore, Plaintiff prays that this Court award damages and provide  
8 relief as follows:

9 1. For injunctive relief, compelling Defendants to comply with the  
10 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
11 plaintiff is not invoking section 55 of the California Civil Code and is not  
12 seeking injunctive relief under the Disabled Persons Act at all.

13 2. Damages under the Unruh Civil Rights Act, which provides for actual  
14 damages and a statutory minimum of \$4,000 for each offense.

15 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
16 to 42 U.S.C. § 12205; and Cal. Civ. Code § 52.

17 Dated: September 10, 2020

CENTER FOR DISABILITY ACCESS

18  
19 By: /s/ Christopher A. Seabock

20 Christopher A. Seabock  
21 Attorney for Plaintiff  
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